

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X  
ARMANDO CALDERON CARALAMPIO  
(A/K/A DANIEL CALDERON), BYRON  
ALIRIO RAMOS BATEN, and MARTIN  
MEJIA CANAN, individually and on behalf  
of others similarly situated,

Plaintiff,

18-CV-09385

-against-

**DEFENDANTS ANSWER**

EVA’S 8<sup>TH</sup> STREET FOOD LLC (D/B/A  
EVA’S KITCHEN), STEVE AYALA, GEORGE  
AYALA (A/K/A ALEX), JACK E. JACOBS,  
NICHOLAS DOE, LISARDO DOE, and JOSE  
DOE,

Defendants,

-----X

Defendants EVA’S 8<sup>TH</sup> STREET FOOD LLC (D/B/A EVA’S KITCHEN), STEVE  
AYALA, GEORGE AYALA (A/K/A ALEX), JACK E. JACOBS, NICHOLAS DOE, LISARDO  
DOE, and JOSE DOE (collectively “Defendants”), by and through their undersigned counsel, for  
their Answer to the allegations in the Complaint (“Complaint”) and to all claims therein, state as  
follows:

1. Admit only that Plaintiffs are former employees of Eva’s 8<sup>th</sup> Street Food LLC,  
refer all questions of law to the Court at the trial of this action, and otherwise deny the remainder  
of the allegations in paragraph 1 of the Complaint.
2. Refer all questions of law to the Court at the trial of this action and otherwise  
deny the remainder of the allegations in paragraph 2 of the Complaint.
3. Deny the allegations in paragraph 3 of the Complaint.

4. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 4 of the Complaint.

5. Admit that Plaintiffs were employed as delivery workers and otherwise deny the remainder of the allegations in paragraph 5 of the Complaint.

6. Deny the allegations in paragraph 6 of the Complaint.

7. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 7 of the Complaint.

8. Deny the allegations in paragraph 8 of the Complaint.

9. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 9 of the Complaint.

10. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 10 of the Complaint.

11. Deny the allegations in paragraph 11 of the Complaint.

12. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 12 of the Complaint.

13. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 13 of the Complaint.

14. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 14 of the Complaint.

15. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 15 of the Complaint.

16. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 16 of the Complaint.

17. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 17 of the Complaint.

18. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 18 of the Complaint.

19. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 19 of the Complaint.

20. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 20 of the Complaint.

21. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 21 of the Complaint.

22. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 22 of the Complaint.

23. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 23 of the Complaint.

24. Admit that Eva's 8<sup>th</sup> Street Food LLC is a New York limited liability company with a principal place of business at 11 W 8<sup>th</sup> Street, New York, NY 10011, refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 24 of the Complaint.

25. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 25 of the Complaint.

26. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 26 of the Complaint.

27. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 27 of the Complaint.

28. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 28 of the Complaint.

29. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 29 of the Complaint.

30. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 30 of the Complaint.

31. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 31.

32. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 32 of the Complaint.

33. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 33 of the Complaint.

34. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 34 of the Complaint.

35. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 35 of the Complaint.

36. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 36 of the Complaint.

37. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 37 of the Complaint.

38. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 38 of the Complaint.

39. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 39 of the Complaint.

40. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 40 of the Complaint.

41. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 41 of the Complaint.

42. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 42 of the Complaint.

43. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 43 of the Complaint.

44. Admit that Plaintiff Calderon was employed as a delivery worker, refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 44 of the Complaint.

45. Deny the allegations in paragraph 45 of the Complaint.

46. Deny the allegations in paragraph 46 of the Complaint

47. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 47 of the Complaint.

48. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 48 of the Complaint.

49. Deny the allegations in paragraph 49 of the Complaint.

50. Refer all questions of law to the Court at the trial of this action and otherwise

deny the remainder of the allegations in paragraph 50 of the Complaint.

51. Admit that Plaintiff was paid by check throughout his employment and otherwise deny the remainder of the allegations in paragraph 51 of the Complaint.

52. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 52 of the Complaint.

53. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 53 of the Complaint.

54. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 54 of the Complaint.

55. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 55 of the Complaint.

56. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 56 of the Complaint.

57. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 57 of the Complaint.

58. Deny the allegations in paragraph 58 of the Complaint.

59. Deny the allegations in paragraph 59 of the Complaint.

60. Deny the allegations in paragraph 60 of the Complaint.

61. Deny the allegations in paragraph 61 of the Complaint.

62. Deny the allegations in paragraph 62 of the Complaint.

63. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 63 of the Complaint.

64. Refer all questions of law to the Court at the trial of this action and otherwise

deny the remainder of the allegations in paragraph 64 of the Complaint.

65. Deny the allegations in paragraph 65 of the Complaint.

66. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 66 of the Complaint.

67. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 67 of the Complaint.

68. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 68 of the Complaint.

69. Admit that Plaintiff Calderon was employed as a delivery worker, refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 69 of the Complaint.

70. Deny the allegations in paragraph 70 of the Complaint.

71. Deny the allegations in paragraph 71 of the Complaint

72. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 72 of the Complaint.

73. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 73 of the Complaint.

74. Deny the allegations in paragraph 74 of the Complaint.

75. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 75 of the Complaint.

76. Admit that Plaintiff was paid by check throughout his employment and otherwise deny the remainder of the allegations in paragraph 76 of the Complaint.

77. Refer all questions of law to the Court at the trial of this action and otherwise

deny the remainder of the allegations in paragraph 77 of the Complaint.

78. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 78 of the Complaint.

79. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 79 of the Complaint.

80. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 80 of the Complaint.

81. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 81 of the Complaint.

82. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 82 of the Complaint.

83. Deny the allegations in paragraph 83 of the Complaint.

84. Deny the allegations in paragraph 84 of the Complaint.

85. Deny the allegations in paragraph 85 of the Complaint.

86. Deny the allegations in paragraph 86 of the Complaint.

87. Deny the allegations in paragraph 87 of the Complaint.

88. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 88 of the Complaint.

89. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 89 of the Complaint.

90. Deny the allegations in paragraph 90 of the Complaint.

91. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 91 of the Complaint.



92. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 92 of the Complaint.

93. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 93 of the Complaint.

94. Admit that Plaintiff Calderon was employed as a delivery worker, refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 94 of the Complaint.

95. Deny the allegations in paragraph 95 of the Complaint.

96. Deny the allegations in paragraph 96 of the Complaint

97. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 97 of the Complaint.

98. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 98 of the Complaint.

99. Deny the allegations in paragraph 99 of the Complaint.

100. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 100 of the Complaint.

101. Admit that Plaintiff was paid by check throughout his employment and otherwise deny the remainder of the allegations in paragraph 101 of the Complaint.

102. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 102 of the Complaint.

103. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 103 of the Complaint.

104. Refer all questions of law to the Court at the trial of this action and otherwise

deny the remainder of the allegations in paragraph 104 of the Complaint.

105. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 105 of the Complaint.

106. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 106 of the Complaint.

107. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 107 of the Complaint.

108. Deny the allegations in paragraph 108 of the Complaint.

109. Deny the allegations in paragraph 109 of the Complaint.

110. Deny the allegations in paragraph 110 of the Complaint.

111. Deny the allegations in paragraph 111 of the Complaint.

112. Deny the allegations in paragraph 112 of the Complaint.

113. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 113 of the Complaint.

114. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 114 of the Complaint.

115. Deny the allegations in paragraph 115 of the Complaint.

116. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 116 of the Complaint.

117. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 117 of the Complaint.

118. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 118 of the Complaint.

119. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 119 of the Complaint.

120. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 120 of the Complaint.

121. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 121 of the Complaint.

122. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 122 of the Complaint.

123. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 123 of the Complaint.

124. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 124 of the Complaint.

125. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 125 of the Complaint.

126. Deny the allegations in paragraph 126 of the Complaint.

127. Deny the allegations in paragraph 127 of the Complaint.

128. Deny the allegations in paragraph 128 of the Complaint.

129. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the deny the allegations in paragraph 129 of the Complaint.

130. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 130 of the Complaint.

131. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 131 of the Complaint.

132. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 132 of the Complaint.

133. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 133 of the Complaint.

134. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 135 of the Complaint.

135. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 135 of the Complaint.

136. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 136 of the Complaint.

137. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 137 of the Complaint.

138. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 138 of the Complaint.

139. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 139 of the Complaint.

140. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 140 of the Complaint.

141. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 141 of the Complaint.

**AS AND FOR THE FIRST CAUSE OF ACTION**

142. Defendants repeat and re-allege their responses to paragraphs 1-141 of the Complaint with the same force and effect as if fully set forth herein.

143. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 143 of the Complaint.

144. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 144 of the Complaint.

145. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 145 of the Complaint.

146. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 146 of the Complaint.

147. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 147 of the Complaint.

148. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 148 of the Complaint.

**AS AND FOR THE SECOND CAUSE OF ACTION**

149. Defendants repeat and re-allege their responses to paragraphs 1-148 of the Complaint with the same force and effect as if fully set forth herein.

150. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 150 of the Complaint.

151. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 151 of the Complaint.

152. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 152 of the Complaint.

**AS AND FOR THE THIRD CAUSE OF ACTION**

153. Defendants repeat and re-allege their responses to paragraphs 1-152 of the Complaint with the same force and effect as if fully set forth herein.

154. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 154 of the Complaint.

155. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 155 of the Complaint.

156. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 156 of the Complaint.

157. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 157 of the Complaint.

**AS AND FOR THE FOURTH CAUSE OF ACTION**

158. Defendants repeat and re-allege their responses to paragraphs 1-157 of the Complaint with the same force and effect as if fully set forth herein.

159. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 159 of the Complaint.

160. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 160 of the Complaint.

161. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 161 of the Complaint.

**AS AND FOR THE FIFTH CAUSE OF ACTION**

162. Defendants repeat and re-allege their responses to paragraphs 1-161 of the Complaint with the same force and effect as if fully set forth herein.

163. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 163 of the Complaint.

164. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 164 of the Complaint.

**AS AND FOR THE SIXTH CAUSE OF ACTION**

165. Defendants repeat and re-allege their responses to paragraphs 1-164 of the Complaint with the same force and effect as if fully set forth herein.

166. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 166 of the Complaint.

167. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 167 of the Complaint.

**AS AND FOR THE SEVENTH CAUSE OF ACTION**

168. Defendants repeat and re-allege their responses to paragraphs 1-167 of the Complaint with the same force and effect as if fully set forth herein.

169. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 169 of the Complaint.

170. Refer all questions of law to the Court at the trial of this action and otherwise deny the remainder of the allegations in paragraph 170 of the Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

171. The Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

172. Individual defendants are not and was not “employer(s)” within the meaning of the Fair Labor Standards Act (“FLSA”) or the New York State Labor Law (“NYLL”).

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

173. To the extent that the period of time alluded to in the Complaint, or the period of time alleged later in this action, predates the limitations period set forth in Section 6(a) of the Portal-to-Portal Act, 29 U.S.C. § 255(a), and/or any other applicable statutes of limitation, such claims are barred.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

174. This Court should not exercise supplemental jurisdiction over the counts in the Complaint that purport to arise under the New York State Law.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

175. Defendants, at all times, acted in good faith to comply with the FLSA and the NYLL, and with reasonable grounds to believe that their actions did not violate the statutes cited in the Complaint, and Defendants assert a lack of willfulness or intent to violate the FLSA or the NYLL as a defense to any claim by Plaintiffs for liquidated damages.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

176. Plaintiffs’ claims are barred, in whole or in part, by the provisions of Section 10 of the Portal-to-Portal Act, 29 U.S.C. § 259, because such actions taken in connection with Plaintiffs’ compensation were done in good faith in conformity with and reliance upon written administrative regulations, orders, rulings, approvals, interpretations, and written and unwritten administrative practices or enforcement policies of the Administrator of the Wage and Hour Division of the United States Department of Labor.



**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

177. Plaintiffs' claims are barred, in whole or in part, by the provisions of Section 11 of the Portal-to-Portal Act, 29 U.S.C. § 260, because any acts or omissions giving rise to this action were done in good faith and with reasonable grounds for believing that the actions or omissions were not in violation of the FLSA or the NYLL.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

178. Plaintiffs' claims are barred, in whole or in part, to the extent that the work they performed falls within exemptions, exclusions, exceptions, or credits provided for in Section 7 of the FLSA, 29 U.S.C. § 207, or the NYLL.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

179. Plaintiffs' claims are barred, in whole or in part, to the extent Plaintiffs failed, refused, and/or neglected to mitigate or avoid the damages complained of in the Complaint, if any.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

180. If Plaintiffs succeed in establishing a violation under the FLSA or the NYLL, and to the extent any sums are found due and owing to Plaintiffs, which is expressly denied, Defendants are entitled to a set-off against said sum to the extent paid, tendered, waived, compromised, and/or released prior to the adjudication herein, including but not limited to those amounts paid, tendered, waived, compromised, and/or released through any other proceeding, either formal or informal, or to the extent any additional compensation was paid to Plaintiffs over and above his wages.

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE**

181. Any claim for additional compensation by Plaintiffs must be reduced by compensation already paid to Plaintiffs for periods not compensable under the FLSA and/or the NYLL.

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE**

182. Plaintiffs' claims are barred or should be reduced, in whole or in part, by exclusions, exceptions, credits, recoupments, or offsets permissible under the FLSA or the NYLL.

**AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE**

183. Plaintiffs are not entitled to any equitable relief because they have an adequate remedy at law. This defense also may apply to the claims of some or all of the class of allegedly similarly situated persons.

**AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE**

184. Plaintiffs' Complaint is presented in conclusory and vague terms, which prevents Defendants from anticipating all affirmative defenses and claims that may be applicable in this action. Therefore, to the extent permitted under the Federal Rules of Civil Procedure and applicable case law, Defendants reserve the right to assert additional defenses or claims that may become known during the course of discovery.

**AS AND FOR A FIFTHTEENTH AFFIRMATIVE DEFENSE**

185. Plaintiffs' claims are barred to the extent any particular employee petitioned for bankruptcy under either Chapter 7 or Chapter 13 of the United States bankruptcy code, yet failed to disclose potential claims against Defendants as required under applicable bankruptcy laws.

**AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE**

186. Plaintiffs' claims are barred, in whole or in part, by the provisions of 29 U.S.C. § 207, because none of the defendants were, at any relevant time, an enterprise engaged in commerce within the meaning of the law.

**AS AND FOR A SEVENTEETH AFFIRMATIVE DEFENSE**

187. Plaintiffs' claims are barred, in whole or in part, under the doctrine of waiver, laches, estoppel, ratification, acquiescence, or unclean hands.

**AS AND FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE**

188. Defendants have no knowledge of, nor should they have had knowledge of, any alleged uncompensated work by the Plaintiffs, and Defendants did not authorize, require, request, suffer, or permit such activity by the Plaintiffs as forth in the Complaint.

**AS AND FOR A NINETEETH AFFIRMATIVE DEFENSE**

189. The Complaint, and each cause of action thereof, is barred – or the damages flowing therefrom reduced – because Plaintiffs failed to notify Defendants of the alleged statutory violations at the time such violations allegedly occurred, which prevented Defendants from taking any action to remedy such alleged violations.

**AS AND FOR A TWENTIETH AFFIRMATIVE DEFENSE**

190. Plaintiffs' Rule 23 class claims are incompatible with their Rule 216(b) collective action claims. Accordingly, this Court should dismiss Plaintiffs' Rule 23 class allegations with prejudice and allow individuals to assert their state law wage and hour claims on an individual basis in this action.

**AS AND FOR A TWENTY-FIRST AFFIRMATIVE DEFENSE**

200. Plaintiffs cannot establish or satisfy the requirements of a collective action pursuant to Section 216(b) of the FLSA and, therefore, the collective action allegations of the Complaint should be stricken and dismissed.

**AS AND FOR A TWENTY-SECOND AFFIRMATIVE DEFENSE**

201. Plaintiffs cannot establish or satisfy the requirements for a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure and, therefore, the class action allegations of the Complaint should be stricken and dismissed.

**AS AND FOR A TWENTY-THIRD AFFIRMATIVE DEFENSE**

202. The FLSA and its collective action procedures preempt state law that might otherwise permit class action treatment.

**AS AND FOR A TWENTY-FOURTH AFFIRMATIVE DEFENSE**

203. Plaintiff's class allegations must be dismissed because an independent and individual analysis of each putative class member's claims and each of Defendants' breaches to such claims is required.

**AS AND FOR A TWENTY-FIFTH AFFIRMATIVE DEFENSE**

204. Plaintiffs are not entitled to an award of liquidated damages under both FLSA and NYLL with respect to the same violation. As such, Plaintiffs' allegations of entitlement to both in the Complaint are improper and must be dismissed

**AS AND FOR A TWENTY-SIXTH AFFIRMATIVE DEFENSE**

205. In addition to the foregoing defenses, Defendants reserve the right to amend their Answer to raise any and all other additional affirmative and other defenses that may become evident during discovery and during any other proceeding in this action or pursue any available

counterclaims against Plaintiff or any putative class member who joins this action as those claims become known during this litigation.

WHEREFORE, Defendants request judgment against the Plaintiffs with respect to their claims asserted herein, dismissing the Complaint in this action, and entering judgment in favor of Defendants, together with costs and disbursements of the above-entitled action and any other relief this Court may deem just and proper.

Dated: New York, New York  
December 4, 2018

Respectfully Submitted,

**LAW OFFICE OF A. KOUTSOUDAKIS, PLLC**

/s/ Andreas Koutsoudakis

By: Andreas Koutsoudakis, Esq. (AK4162)

*Attorneys for Defendants*

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